

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Sher Analyst: Roger Lackey Bill Number: SB 48

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 08-18-99

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Public Record Disclosure/State Agencies Provide In Writing Determination If Records Are Disclosable/Allows Court To Impose \$100 Fine

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED July 7, 1999 STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would amend the California Public Records Act to require that state agencies justify the withholding of any record by demonstrating in writing that a record is exempt from disclosure or the public interest is served by not making the record public. This bill would establish a procedure to allow any person to appeal to the Attorney General (AG) if a state or local agency denies access to a public record or subverts the intent of the bill by actions short of denial of inspection. In addition, this bill would specify that a person does not have to exhaust this new administrative remedy before filing a proceeding in court to compel disclosure. Finally, this bill would provide that the court may award a prevailing plaintiff an amount of not more than \$100 for each day, up to a maximum of \$10,000, that the agency denied the right of the plaintiff to inspect the record.

SUMMARY OF AMENDMENT

The August 18, 1999, amendment added that a state agency may submit any additional information or explanation for the denial within 10 days of the Attorney General's (AG) receipt of a request for review by a person whose request to review or receive copies of a public record was denied by that state agency.

The amendment also revised the imposition of the \$100 fine to allow the court discretion on whether to award the fine and to specify that the award would not include the period of time that a court is considering the plaintiff's petition. For imposition of the fine, the amendment also requires that the failure to comply must be in bad faith or with the knowledge that the request sought nonexempt records. This provision had been one of the factors the court could consider, but not a requirement.

Board Position:

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Legislative Director

Date

Johnnie Lou Rosas

8/27/1999

In addition, the August 18, 1999, amendment provided that the time limits for the AG to respond to a person's request are directory not mandatory, and also provided a statement of legislative intent that an opinion issued by the AG under this section shall be given no greater deference than any other opinion issued by the AG.

Except for the discussion above, the department's analysis of SB 48 as amended July 7, 1999, still applies.

BOARD POSITION

Support.

At its March 23, 1999, meeting, the Franchise Tax Board voted 2-0 to support this bill as introduced December 7, 1998.